

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SUNDANCE, INC. et al.,

Plaintiffs,

v.

Case No. 02-73543

DEMONTE FABRICATING, LTD. et al.,

HONORABLE AVERN COHN

Defendants.

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ORDER

This is a patent case. Plaintiffs Sundance, Inc. and Merlot Tarpaulin and Sidekit Manufacturing Company, Inc., holder of U.S. Patent No. 5,026,109 (the '109 patent) covering a Segmented Cover System, is suing DeMonte Fabricating, Ltd. and Quick Draw Tarpaulin Systems Inc. for infringement. Trial is scheduled to begin on Monday, April 24, 2006.

On April 19, 2006, the Court held a hearing on the parties' motions in limine and other trial matters. This order memorializes the Court's rulings.

1. Plaintiff's Motion in Limine to Preclude Reference to Inequitable Conduct Claims in the Presence of the Jury is GRANTED. There shall be no reference to inequitable conduct or the use of pejoratives regarding prosecution of the '109 patent in opening statements. After that, defendant's counsel must voir dire a witness outside the presence of the jury if the witness is to be questioned on inequitable conduct.
2. Plaintiff's Motion in Limine Re Testimony at Trial by Humphrey Mosley is DENIED.

3. Plaintiff's Motion in Limine for an Order to Preclude Testimony at Trial by Dennis Pedder, PTO Examiner is GRANTED as to the jury phase of the trial.
4. Plaintiff's Motion in Limine for an Order to Preclude Testimony at Trial by Defendants' Designated Expert Danile H. Bliss is DENIED.
5. Defendants' Motion Regarding What Examples of Their Products the Parties Can Bring to a View in this Matter is resolved as follows:
 - Defendant can bring in exemplar products for the jury to view
 - Plaintiff may not bring in exemplar products unless defendant challenges commercial success on the grounds that plaintiff's sales are for products not covered by the '109 patent.
6. Defendant's Motion for a Ruling that Plaintiffs are Estopped from Arguing that Conventional Segmented Cover Systems Known to be Used in Diverse Applications are Non-Analogous Prior Art to the Invention of U.S. Patent 5,026, 09 for Purposes of Determining Obviousness under 35 U.S.C. is DENIED.
7. Defendant's Motion for Partial Summary Judgment regarding laches is DENIED as it relates to unenforceability and HELD IN ABEYANCE as it relates to damages.
8. Plaintiff's unfair competition claim is BIFURCATED for separate trial.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: April 19, 2006

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, April 19, 2006, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager
(313) 234-5160